

REMARKS

The application includes claims 1-20 prior to entering this amendment.

The examiner rejected claims 1, 11, and 18 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as the invention.

The examiner rejected claims 1, 2, 10-12, and 14 under 35 U.S.C. § 103(a) as being unpatentable over Weiss *et al.* (U.S. Patent 6,741,600), in view of Best *et al.* (U.S. Patent 6,118,796).

The examiner rejected claims 3, 4, 13, and 17 under 35 U.S.C. § 103(a) as being unpatentable over Weiss, in view of Best, as applied to claim 1 above, and further in view of FitzGerald *et al.* (U.S. Patent 7,310,334).

The examiner rejected claims 5-9 and 15 under 35 U.S.C. § 103(a) as being unpatentable over Weiss, in view of Best, and FitzGerald, as applied to claim 3 above, and further in view of Teruhi *et al.* (U.S. Patent Application Publication No. 2003/0072269).

The examiner rejected claim 16 under 35 U.S.C. § 103(a) as being unpatentable over Weiss, in view of Best and Teruhi, as applied to claim 16 above, and further in view of Kressin (U.S. Patent Application Publication No. 2003/0220971).

The examiner rejected claims 18 and 19 under 35 U.S.C. § 103(a) as being unpatentable over FitzGerald, in view of Best and further in view of Teruhi.

The examiner rejected claim 20 under 35 U.S.C. § 103(a) as being unpatentable over FitzGerald, in view of Best and Teruhi, as applied to claim 19 above, and further in view of Chu *et al.* (U.S. Patent Application Publication No. 2007/0286165).

The application remains with claims 1-20 after entering this amendment.

The applicants do not add new matter and request reconsideration.

Claim Rejections - 35 U.S.C. § 112

The examiner rejected claims 1, 11, and 18 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as the invention.

The rejection is respectfully traversed. For example, claim 1 clearly states that the no-op media payload packets are formatted as though the media packets contain media payloads but

that do not contain media payloads. However, claims 1, 11, and 18 have been amended to further recite the no-op media payload packets are formatted without media payloads as suggested by the Examiner. Accordingly, claims 1, 11, and 18 are allowable under 35 U.S.C. § 112.

Claim Rejections - 35 U.S.C. § 103

The examiner rejected claims 3, 4, 13, and 17 under 35 U.S.C. § 103(a) as being unpatentable over Weiss, in view of Best, as applied to claim 1 above, and further in view of FitzGerald.

The examiner rejected claims 5-9 and 15 under 35 U.S.C. § 103(a) as being unpatentable over Weiss, in view of Best, and FitzGerald, as applied to claim 3 above, and further in view of Teruhi.

The examiner rejected claims 18 and 19 under 35 U.S.C. § 103(a) as being unpatentable over FitzGerald, in view of Best and further in view of Teruhi.

The examiner rejected claim 20 under 35 U.S.C. § 103(a) as being unpatentable over FitzGerald, in view of Best and Teruhi, as applied to claim 19 above, and further in view of Chu.

The Examiner Improperly Rejected Claims 3-9, 13, 15, and 17-20 under 35 U.S.C. § 103(a)

The rejections of 3-9, 13, 15, and 17-20 under 35 U.S.C. § 103(a) are improper. As set out in the STATEMENT OF COMMON OWNERSHIP contained in the previous Office Action Response filed on October 27, 2008, the Fitzgerald patent and the instant application are both owned by the same owner at the time this invention was made. This disqualifies Fitzgerald as a reference under 35 U.S.C. 103(a). See MPEP 706.02(1)(1)-(3) and § 103(c).

The Examiner in the latest November 14, 2008 response indicated that the arguments presented in the previous response were persuasive and that the rejections of claims 3-9, 13, 15, and 17-20 in light of Fitzgerald have been withdrawn.

However, the Examiner has continued to reject claims 3-9, 13, 15, and 17-20 under 35 U.S.C. § 103(a) as being unpatentable over Fitzgerald.

Since the Examiner has already agreed that claims 3-9, 13, 15, and 17-20 are patentable over Fitzgerald and because the present application is eligible for the provisions of 35 U.S.C. §

103c, the rejections of claims 3-9, 13, 15, and 17-20 should be withdrawn, and claims 3-9, 13, 15, and 17-20 be allowed to issue.

Applicant wishes to thank the Examiner for discussing this application on January 13, 2009. The Examiner indicated that he would review the issue discussed above and possibly provide a corrected Office Action.

CONCLUSION

For the foregoing reasons, the applicants request reconsideration and allowance of claims 1-20. The applicants encourage the examiner to telephone the undersigned if it appears that an interview would be helpful in advancing the case.

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Respectfully submitted,

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